IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2006

CORAM

THE HONOURABLE Ms. JUSTICE PRABHA SRIDEVAN

W.P. No.6478 of 1998

1. P. Sampath
2. C.S. Jothiraj
3. S. Kumar ..Petitioner

Vs.

1. The Presiding Officer
Labour Court
Coimbatore

2. The Management of
Happy Bee Knitting Industries
17, Lakshmi Nagar
Tirupur-2. .. Respondents

Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records from the first respondent relating to the Preliminary order dated 19-02-1995 and the final award dated 20-06-1995 in I.D.Nos.238/93, 239/93 and 240/93 dated and quash the same and direct the 2nd respondent to reinstate the petitioners with continuity of service, backwages and all other attendant benefits and award costs.

For petitioner :: Mr. S.D. Hariparanthaman
For respondent No. 2:: Mr. R. Gandhi, Senior Counsel
for Mr. R.G. Narendiran for R2

ORDER

The petitioners were working as Cutting Masters of the second respondent-Company. The second respondent had a well-established export business. There were about 350 workmen. The workmen of the second respondent-Company formed a Union which was affiliated to CITU.

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2. The first petitioner was the Secretary of the Union. The second and third petitioners were active members. According to the petitioners, it is because of their activities as Union members that the petitioner decided to terminate their services and that they have been victimized. On 15-06-1992, the first petitioner was not allowed to work. When the same was represented to the Management by the other workers of the cutting section, the others were also not permitted to work. On 18-06-1992, the Union represented to the Management to allow all the workers to perform their duties. The Management did not respond to it. From 23-06-1992, all the other workers of the Company represented to the Management to allow the workers of the cutting section to perform work. Then, all of them were also not allowed to work. Conciliation proceedings were held and before the Conciliation Officer, two letters were handedover. One letter was dated 19-06-1992 wherein it was stated that notice was issued to the first petitioner framing some charges, which the first petitioner refused to receive and that the other workers were also abstaining from their own accord and that all the workers should be directed to return to the work. On 29-06-1992, all the workers were suspended pending disciplinary action. In the show cause notice dated 15-06-1992, the charges were as follows:

(1) that the first petitioner was collecting money for a tour programme during factory hours without doing his works and interrupting other workers;

(2) On 12-06-1992, the first petitioner had used abusing words against the Directors.

3. By the letter dated 02-07-1992, the first petitioner denied the charges. All the petitioners submitted their explanation for the charge-sheet dated 27-06-1992. The allegation that in the charge memo that the three petitioners alongwith others stopped the workers from entering the company on 24-06-1992 and threatened some of them and that on the same evening, the three petitioners have allegedly threatened and not allowed the lorry driver to remove the goods from the Company were all denied. Not satisfied with the explanation, domestic enquiry was conducted. According to the petitioners, it was conducted without their consent. Only observers, who were co-workmen were alone permitted on the workmen side while the Management is represented by the Presenting Officer who is a law knowing person. The request of the petitioner to

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have an Advocate was ignored by the Enquiry Officer. On 11-07-1992, all the petitioners were questioned by the Enquiry Officer about the alleged charges, and they denied them as false and frivolous. The first Management Witness M.W.1 was examined and the enquiry was posted for cross examination on 15-07-1992. On 15-07-1992, though the workmen's observer was absent, the enquiry proceeded and M.W.1 was cross-examined. At their request, the enquiry was adjourned to 18-07-1992. On 18-07-1992, the earlier Presenting Officer was changed and another person represented the Management. The petitioner protested to this. The enquiry was adjourned to 23-07-1992. On 23-07-1992, the petitioners were asked to continue with the cross-examination without considering their protest to the change of the Presenting Officer. The cross-examination was done for some time. The enquiry was then adjourned to 28-07-1992. The cross-examination continued and the enquiry was adjourned to 29-07-1992. On 29-07-1992, the petitioners expressed their dissatisfaction. The enquiry was adjourned without informing the next enquiry date. Then, the enquiry was posted on 06-08-1992 again the petitioners objected to the change of the Management representative and then gave a letter pleading the second petitioner's sickness. They refused to take part in the enquiry and walked out. They were et ex parte. The enquiry continued. The Enquiry Officer filed his report.

4. On 24-08-1992, they were served with orders of termination. The petitioners' claimed that they were not furnished with the copy of the enquiry proceedings nor the findings of the Enquiry Officer. According to the petitioners, the enquiry itself was conducted properly and it was vitiated and therefore, a preliminary objection was taken. The Labour Court considered both the issues and the preliminary objection was rejected and the final award was passed dismissing the claim, awarding only a sum of Rs.5000/- to each petitioners.

5. Mr. Hari Paranthaman, learned counsel appearing for the petitioner submitted that the enquiry was conducted contrary to the principles of natural justice. According to him there are four vitiating factors:

(1) Denial of legal assistance ;
(2) The refusal on the part of M.W.1 to answer ;
(3) Bias ;
(4) The petitioners were set ex parte without any reasons.

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6. The learned counsel, Mr. Hari Paranthaman submitted that if on this issue this Court holds in favour of the petitioner then it is not necessary to go into the merits of the final award. As regards the final award, learned counsel for the petitioner submitted that the basis on which the respondent-company framed their charges was, one that the petitioners have prevented other workmen from attending work and the petitioners, two, the petitioners have prevented the lorry from transporting the goods from and out of the Company.

7. Two documents which allegedly are statements by workmen to support the case of the Management are clearly concocted documents as could be seen from the fact that the dates are stamped and this stamp is identical to the date stamp allegedly given by the B transporters which hold the stamp which was stopped by the workmen. The learned counsel submitted that when neither the workmen nor the lorry company have come forward to give evidence, the enquiry officer could not have come to the conclusion that the charge was proved and the Labour Court ought to have seen that the enquiry officer's finding was without any evidential basis.

8. The learned Senior Counsel appearing for the respondent would submit that a flourishing business had come to a stand still and has been totally ruined by the reckless conduct of the workmen. The enquiry officer had given a fair hearing. There was no bias. The petitioners walked out of the enquiry. When M.W.1 had clearly spoken of the obstruction by the petitioners and those statements remain unchallenged it was not necessary for the management to examine anyone else. The learned Senior Counsel also submitted that the scope of judicial review in such matters is very limited.

9. The following judgments were cited.

(1) *Workmen, E.V.L., Vs. Engine Valves Ltd.,* (1983 II LLJ 232)

(2) *Tamil Nadu Housing Board Vs. P.O. II Addl. Labour Court. Madras*
(1997 I LLJ 109)

(3 C.Kumaraswami Vs. Third Addl. Labour Court (1993 I LLN 785)

(4) Parry & Co. Ltd., Vs. Deputy Commissioner of Labour

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(1996 I LLJ 169)

(5) Management of Madurantakam Co-op. Sugar Mills Ltd., Vs.
S. Viswanathan (2005 3 SCC 193)

(6) General Secretary, South Indian Cashew Factories Workers' Union
Vs. M.D., Kerala State Cashew Development Corporation Ltd.,
(2006 II LLJ 772)

(7) State Bank of India Vs. K.C. Tharakan (2005 (8) SCC 428)

10. Let us examine the preliminary issue at first and thereafter, the merits can be gone into.

Three allegations are made by the petitioner to support his case that the enquiry was not fair and proper. One is that the petitioners did not have legal assistance whereas the respondents had legal assistance; two, the management witnesses did not co-operate in the cross-examination and the enquiry officer was biased; three, there was no justification to set the petitioners ex parte.

11. On 06-07-1992, the petitioner made a request to the enquiry officer that the management representative are legally trained and therefore, the petitioner should have some one with legal knowledge to help him. The enquiry officer responded to it by letter dated 11-07-1992 stating that it is not correct to state that the management representative are trained in legal knowledge. However, the management allowed the petitioners to have one of the co-worker as an observer. On 29-07-1992, the petitioner gave a representation to the enquiry officer stating that in many of the questions, the management witnesses refused to answer answering that the questions are irrelevant and the enquiry officer had not insisted upon the witness to answer the question," To this, a detailed letter was given by the enquiry officer on 29-07-1992. From this, it is seen that the enquiry officer had tried to explain to the petitioners the manner in which the enquiry should be conducted by observing the principles of natural justice. But the petitioners failed to comprehend the basis on which the enquiries are conducted. As regards the complaint regarding the refusal of the management witnesses to answer, the enquiry officer stated that all that the enquiry officer can do is to record what the management

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witnesses states in response to a question and that the enquiry officer cannot force the witness to answer in a particular manner.

> "ஆனால் இதற்கு சாட்சியம் அளிக்கும் பதிலை நான் அப்படியே ஏற்று எழுதத்தான் வேண்டும். இதில் இயற்கை நியதி விசாரணைப்படி விசாரணை அதிகாரியாகிய நான் இ வ்வாறுதான் பதில் கூற வேண்டும் என்று குறுக்கிட்டு கூறவதற்கு இயலாது."

He has also referred to some questions which according to the enquiry officer were irrelevant and he has assured that sufficient opportunity has been given and will continue to be given during the enquiry.

> "குற்றச்சாட்டை நிரூபிக்க உங்களுக்கு சந்தர்ப்பம் அளிக்கப்பட்டது. இனியும் அளிக்கப்படும்."

12. And again, he has assured that he would conduct the enquiry in accordance with the principles of natural justice. From these documents, it is difficult to find fault with the above approach of the Enquiry Officer. There is nothing to indicate that the Management Representative was legally equipped and that the denial of the assistance of a lawyer to the workmen has resulted in injustice. As per the enquiry report, the enquiry was conducted on 11-07-1992, 15-07-1992, 18-07-1992, 23-07-1992, 28-07-1992, 29-07-1992 and 06-08-1992. The enquiry report records that,

> "While the 3 accused workmen participated in the enquiry proceedings on some days, on most of the days when the enquiry was taken up, the enquiry proceedings were postponed at the request of the 3 accused workmen for some reasons or the other."

Now let us see whether this statement is correct. On 11-07-1992, the three petitioners have taken part and one Kuppusamy, Duraisamy and Karuppana Chettiar and observers on the side of the workmen were also present. On 11-07-1992, the charges were read out and the management witness gave his evidence. Thereafter, it was adjourned to 15-07-1992 for their cross-examination. On 15-07-1992, M.W.1 was cross-examined by the first petitioner, and after asking some questions, the first petitioner requested that the matter may be adjourned. On 18-07-1992, the Management Representative did not appear and in his place, one Govindan appeared. The workmen insisted that the original Management Representative alone should appear. Thereafter

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the enquiry officer adjourned it to 23-07-1992. On 23-07-1992, M.W.1 was cross-examined in detail. At that time, the enquiry officer gave some guidance as to the manner in which further questions can be asked and decided to give an opportunity to the petitioners to frame proper questions. On this ground, the enquiry was adjourned to 28-07-1992. On 28-07-1992, the first petitioner proceeded with the cross-examination. Then the enquiry officer adjourned the matter to 29-07-1992 on the ground that since the workmen are asking questions that are irrelevant, a memo of instructions would be given to them.

> "இந்நிலையில் குற்றச்சாட்டிற்கு அப்பாற்பட்ட கேள்விகளை கேட்பதால் இதற்காக இன்று தனியாக அறிவுரை நோட் டீஸ் சான்று கொடுத்து இன்று நடைபெறும் விசாரணையை 29.7.92 தேதி மாலை 3,00 மணிக்கு தள்ளி வைக்கப்படுகிறது என்பதை அறியவும்."

On 29-07-1992, a requisition was given by the petitioners stating that they are not satisfied with the proceedings of the the enquiry officer and to that the enquiry officer wanted to give a written reply and therefore, it was adjourned. The workmen were informed that the date of hearing would be later informed. On 06-08-1992, since the original Management Representative had gone out of town, one Govindan appeared. The petitioners 1 and 3 appeared and the second petitioner did not appear. The objection was given by the petitioners to bring back Parthasarathy, the original Management Representative and a letter dated 05-08-1992 also was given, which was a request made by the second petitioner for granting one weeks' adjournment. To this, the Management Representative objected that if the second petitioner had really been unwell, he should have informed it earlier and that there should be no further adjournment and on that date, the petitioners 1 and 3 also insisted on the presence of Parthasarathy, the original Management Representative and thereafter, refused to take part in the enquiry. So, they were set ex parte and the enquiry was concluded ex parte.

13. The petitioner's claimed that there was no justification to set them exparte and the enquiry should be conducted in accordance with law after giving an opportunity to the petitioners in the preliminary issue. The Labour Court finds that right from the beginning, the petitioners do not co-operate in the enquiry and has held as follows:

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"இந்த வழக்கில் மனுதாரர்கள் மூவரும் ஒழுங்குவிசாரணையில் ஆரம்பகாலத்தில் கலந்து கொண்டு பிறகு தொடர்ந்து பங்கேற்கவில்லை. தகுந்த சந்தர்ப்பம் அளித்தும் அவர்கள் பங்கேற்காமல் இருந்து வந்திருக்கிறார்கள். ..... அந்த சந்தர்ப்பத்தை மூவரும் முழுமையாக பயன்படுத்திக் கொள்ளாமல் இருந்து வந்து இருக்கிறார்கள்."

14. In 2006 II LLJ 708(*G.S. S.I.C.F. Worker's Union Vs. M.D. K.S.C.D. Corpn. Ltd.,)*, relied on by the respondent, wherein the management filed the appeal, it was contended on behalf of the workmen that the disciplinary authority should have weighed the materials with much more care when the departmental proceedings had been conducted ex parte. The Division Bench held that in the domestic enquiry, the delinquent had remained ex parte. But it has been found by the Labour Court that the absence of the delinquent was deliberate. The plea that his failure to attend the enquiry due to his mental problem has not been accepted. Such being the position, the delinquent cannot take any advantage of the fact that the departmental proceedings had been conducted ex parte. If the delinquent absented himself deliberately, he cannot claim sympathy thereafter at any rate. The delinquent has not taken any effort to produce any specific material to establish his case.

15. The same applies to this case. We have seen from the enquiry report that the enquiry officer had been very restrained and patient even when the petitioner sought for an adjournment after only 4 or 5 questions were asked. The enquiry officer had explained the process, acceded to their request where it was legally permissible and refused where it was not. Further, only because of the non-co-operation of the workers and because of their absence from attending the enquiry, they were set ex parte. In the light of the judgment above, the petitioners cannot now claim that the enquiry was not fair and proper. The findings on the preliminary issue is confirmed.

16. As regards the merits of the matter, we have already referred to the oral and documentary evidence.

(1) The respondent had examined three witnesses. M.W.1 was cross-examined by the petitioner. After they were set ex parte M.Ws.2 and 3 were examined. M.W.1 had stated that on 24-06-1992, 40 workers had been working in the Company and when the workers were returning home, the three petitioners threatened them and the complaint was

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marked as Exs-M2 and M3 and again, later when the export orders were being loaded the petitioners prevented the lorry drivers and the Khalasis from removing the goods from the Company and that M.W.1 had witnessed this incident alongwith one Karthikeyan and also informed the management about the prevailing situation through phone. The lorry owner had also given a complaint which was marked as Ex-M4. M.W.1 was examined by all the three petitioners. In the cross-examination, the petitioners had asked from which date they had stopped the work. M.W.1 answered that from 26-06-1992 the petitioners prevented the workers from doing their work. Then the petitioners asked how could they prevented the workers when there were Police Officials. M.W.1 said that they called the workers and send them away. When the petitioner made a suggestion that this was totally a false charge, M.W.1 maintained his stand that what he said was true. Thereafter, there was no cross-examination with regard to these two incidents that had been spoken to by M.W.1. M.W.2 also referred to the incident that occurred earlier where the three petitioners stopped the workers from going to work and again the incident that occured later on i.e., on 24-06-1992 where they prevented the Khalasis from loading the lorry. M.W.3 also supported the evidence of M.W.1.

(2) On the basis of the evidence of these three witnesses it was found that the charges were proved. When the petitioners had not chosen to proceeded to cross-examine the witnesses, as held by the Division Bench, they cannot now claim sympathy.

(3) It was contended on behalf of the petitioners that how Exs-M2, M3 and M4 could be relied on without examining the authors of those documents. They were marked through M.W.1 and even if we eschew these documentary evidence, M.W.1 has spoken about the incidents and had maintained his stand in the cross-examination also.

17. In these circumstances, it is doubtful if the non-examination of the authors of Exs-M.2, M3 and M4 is really material. In 1983 II LLJ 232(*Workmen, employed in Engine Valves Limited Vs. Engine Valves Limited)*, the Division Bench held that an industrial tribunal is duty bound to reappraise the evidence and record, and find out the correctness of the finding of misconduct. It cannot in a general manner touch upon the evidence without fully comprehending the evidence on record and that an expression of general agreement with reasons given in the decision which is under appeal is no longer available to a Tribunal, but it requires reappraisal of evidence for upholding the

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findings rendered in the domestic enquiry. 1996 (I) L.L.J. 169 [*Parry & Co. Ltd. vs. Deputy Commissioner of Labour*] is to the same effect. Examined from this perspective, the Tribunal does not suffer from any infirmity. The Tribunal has referred to Exs-M2 and M3 and specifically refer to the oral evidence of M.W.1, "மேலும் மூன்று மனுதாரர்களும் தொழிலாளிகளை பணிக்கு செல்லவிடாமல் தடுத்திருக்கிறாகள் என்று தெரிய வருகிறது.". Therefore, the Tribunal has considered the relevant documents mentioned by the enquiry officer to arrive at its finding. Therefore, it cannot be said that the evidence was not considered. So 1997 (I) L.L.J. 923 [*Tamil Nadu Housing Board vs. Presiding Officer, II Additional Labour Court, Madras*] does not apply, which was a case of a non-speaking award. Whatever evidence was available was considered and only when the petitioners chose to walk out of the enquiry, they were set ex parte and an ex parte order was passed. Therefore, I do not find any infirmity in the order in the finding on facts and on merits.

18. The writ Court is really not sitting in appeal over the award, all that is required to be seen is whether the principles of natural justice is followed and there is sufficient evidence to support the charge(vide (2005) 8 S.C.C. 428 [*State Bank of India vs. K.C. Tharakan*]). In 2006 (II) L.L.J. 772 [*General Secretary, South Indian Cashew Factories Workers' Union vs. Managing Director, Kerala State Cashew Development Corporation Limited*], it was held that bias must be pleaded and proved, and that the domestic enquiries are of a simple nature whether technical rules as to evidence and procedure do not prevail. The limited scope of judicial review is also spelt on in (2005) 3 S.C.C. 193 [Management of Madurantakam Co-operative Sugar Mills Ltd. vs. S. Viswanathan].

19. The writ petition stands dismissed. However, there will be no order as to costs.

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Asst.Registrar

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Sub Asst.Registrar

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To

1. The Presiding Officer
   Labour Court
   Coimbatore

2. The Management of
   Happy Bee Knitting Industries
   17, Lakshmi Nagar
   Tirupur-2.

+ ONE CC TO MR. D. HARIPARANTHAMAN, ADVOCATE SR NO. 40853

BV(CO)
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